UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-489-RGS

UNITED STATES OF AMERICA

v.

METROPOLITAN DISTRICT COMMISSION, et al.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION
OF NEW ENGLAND, INC.

v.

METROPOLITAN DISTRICT COMMISSION

SCHEDULE SEVEN COMPLIANCE ORDER NUMBER 243

July 2, 2018

STEARNS, D.J.

On June 15, 2018, the Massachusetts Water Resources Authority (MWRA) filed its Biannual Compliance and Progress Report (the 243rd such report over the course of this litigation). The United States and the Conservation Law Foundation have elected since not to file responses.

Schedule Seven

The three-year performance assessment of the Long-Term Combined Sewer Overflow (CSO) Control Plan was inaugurated in January of 2018 in compliance with the milestone set out in Schedule Seven. The performance consultant contract awarded to AECOM Technical Services, Inc. (AECOM), in October of 2017 provides for periodic inspections, wastewater system and CSO metering, hydraulic metering, CSO performance assessments, and water quality assessments. A final report demonstrating that the MWRA has achieved compliance with CSO control standards is expected in December of 2020 in compliance with the last milestone of Schedule Seven.

Combined Sewer Overflow (CSO) Program

a. CSO Post-Construction Monitoring

As of the date of this report, AECOM has now inspected the more than 200 regulator structures associated with the 84 CSO outfalls identified in the Long-Term Control Plan (many of which have been closed). AECOM has overseen the installation of metering at 58 CSO regulator sites (33 active sites and 25 sites capable of activation during extreme weather events). The gathering of data from the sites began on April 15, 2018, and is being used to reconcile differences (minor for the most part) between

verified discharges and the predictions of the current hydraulic model in order to make adjustments to the model as needed.

Working with the MWRA, AECOM has also begun collecting and recording data from the existing permanent meters installed in the pumping stations and treatment facilities maintained by the MWRA, as well as the regulator meters maintained by the four CSO communities (Boston, Cambridge, Chelsea, and Somerville). AECOM has also begun collating rainfall data from the network of gauges that the MWRA uses for its hydraulic model simulations.

Working with the Massachusetts Department of Environmental Protection (DEP), the MWRA has continued its program of monitoring water quality in the receiving waters (the Lower Charles River and Charles Basin, and the Alewife Brook/Upper Mystic River) granted CSO variances by DEP. The MWRA is currently in discussions with the DEP over the scope of the information it needs to support its long-term water quality standards determinations for the variance waters.

b. Annual CSO Discharge Report

On April 30, 2018, the MWRA submitted to the Environmental Protection Agency (EPA) and the DEP the seventeenth in its series of annual reports estimating CSO discharge frequencies, durations, and

volumes at each of the active CSO outfalls. In preparing the report, the MWRA modeled all of the some 100 rainfall events in 2017 and compared them with the predictions of the Typical Year rainfall model developed for setting performance standards under the court-ordered Long-Term Control Plan. The Report notes that 2017 saw the end of drought conditions in the Greater Boston area and a total rainfall amount in line with the Typical Year forecast. CSO discharge frequencies largely tracked the model predictions for the Typical Year, while predicted discharge volume was higher, most likely because of the unusual closeness of a number of storm events.

c. Financial Assistance Agreements

The MWRA reports that its CSO Memorandum of Understanding (MOU) and Financial Assistance Agreement with the City of Cambridge expired on June 30, 2018. Under the Agreement, the MWRA provided the City of Cambridge with more than $100 million to support the design and construction of the Alewife Wetland, as well as the sewer separation and hydraulic relief projects that have greatly reduced the frequency and volume of CSO discharges to Alewife Brook and the Charles River. Under the Cambridge MOU and MOUs entered previously with the Boston Water and Sewer Commission and the Town of Brookline, the MWRA supported

community design and construction of 16 of the 35 Long-Term Control Plan projects and the installation of over 100 miles of new drain and sewer pipes. Collectively, the MWRA provided $428 million in capital construction funds to the CSO communities in a collaborative effort to reduce or eliminate CSO discharges to the Charles River, the Reserved Channel, the Fort Point Channel, the Neponset River, South Dorchester Bay, and Constitution Beach.

d. Water Quality Report Cards for 2017

Fruits of the multi-decade effort to restore Boston Harbor and its tributaries received recognition on May 27, 2018, from the advocacy group Save the Harbor/Save the Bay in its annual Beach Water Quality Report Card. The Report, which is based on the percentage of samples of *Enterococcus* taken at 15 Boston-area public beaches that test at or below the state safe swimming standard. According to the collected data, the 15 beaches collectively were deemed safe for swimming 94 percent of the time. The M Street, Carson, and Pleasure Bay beaches tested safe 100 percent of the time, while Constitution Beach in East Boston, City Point Beach in South Boston, and Savin Hill Beach and Malibu Beach on South Dorchester Bay tested safe over 90 percent of the time. Only Tenean Beach in Dorchester tested below the 90 percent threshold (at 81 percent).

The EPA bestowed a second encomium on the MWRA and the Long-Term Control Plan on June 1, 2018, in its 23rd annual Charles River Water Quality Report Card. The EPA gave the lower Charles River a grade of A- for water quality in 2017. By comparison, in 1995, at the commencement of the EPA's Charles River Initiative, the River received a grade of D. The EPA found the lower Charles River to meet the bacterial water quality standard for safe boating 95 percent of the time and the standard for safe swimming 72 percent of the time. Again for sake of comparison, the percentages for 1995 were 39 and 19 percent, respectively. The EPA credited the Long-Term Control Plan for the dramatic improvement. Over the life of the implementation of the Plan, the annual CSO discharge to the Charles River has been reduced 99 percent, from an annual average of approximately one and three-quarters billion gallons in the late 1980's to less than fourteen million gallons today (most of which undergoes treatment).

ORDER

Consistent with the court's revised Scheduling Order, the MWRA will submit Compliance Report No. 244 on or before December 15, 2018.

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE